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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING: PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Preliminary report on the means whereby the right of everyone to own property alone as well as in association with others fosters, strengthens and enhances the exercise of other human rights and fundamental freedoms, prepared by Mr. Luis Valencia Rodríguez, independent Expert appointed in accordance with Commission on Human Rights resolution 1991/19

Introduction

1. The Commission on Human Rights, at its forty-seventh session, adopted resolution 1991/19 of 1 March 1991 in which the Commission, inter alia:

"...

"Reaffirming the right of States and their peoples freely to choose and develop their political, social, economic and cultural systems and to determine their laws and regulations,

"Recognizing the value of constructive dialogue in the national context on the ways and means by which States can promote the full enjoyment of the right of everyone to own property alone as well as in association with others,

"...

"Convinced that the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, is of particular significance in fostering widespread enjoyment of other basic human rights and contributes to securing the goals of economic and social development enshrined in the Charter of the United Nations,

"Reaffirming, in accordance with article 29 of the Universal Declaration of Human Rights, that, in the exercise of his or her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society,

"1. Believes that the consideration by the international community of the right of everyone to own property alone as well as in association with others would benefit from insights contained in a comprehensive study of that right and its relationship to the effective enjoyment of other human rights and fundamental freedoms;

"2. Believes also that such a study should suggest ways and means to implement the right of everyone to own property alone as well as in association with others, bearing in mind the goals of attaining social justice and fostering the enjoyment of all human rights and fundamental freedoms;

"3. Requests its Chairman to entrust an independent expert with the task of preparing a study, within the existing resources, on the means whereby and the degree to which respect for the right to own property alone as well as in association with others contributes to the development of individual liberty and initiative, which serve to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms, and requests that a preliminary report be submitted to the Commission at its forty-eighth session and the final report at its forty-ninth session".

I. BACKGROUND: MEASURES TAKEN BY UNITED NATIONS BODIES 1/

2. The General Assembly of the United Nations, on 10 December 1948, adopted and proclaimed the

> "Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

3. In a statement following the voting, the President of the General Assembly pointed out that the adoption of the Declaration, "by a big majority, without any direct opposition, was a remarkable achievement". The Declaration, he said, only marked a first step, since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights,

nor would it provide for enforcement; yet it was a step forward in the great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms.

4. The Universal Declaration of Human Rights consists of a preamble and 30 articles setting forth the basic human rights and fundamental freedoms to which all men and women everywhere in the world are entitled, without discrimination. The articles deal with civil and political rights (arts. 3-21) as well as economic, social and cultural rights (arts. 22-27). Among the civil and political rights recognized in the Declaration is the right to own property (art. 17).

5. In its resolution 421 E (V) of 4 December 1950 the General Assembly declared that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent" and that "when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man", and decided "to include in the Covenant on Human Rights economic, social and cultural rights and an explicit recognition of equality of men and women in related rights as set forth in the Charter of the United Nations".

6. In the course of the consideration by the Commission on Human Rights of the draft covenants on human rights, the question of including an article on the right to own property in the draft covenants was the subject of considerable discussion, particularly at the seventh, eighth and tenth sessions of the Commission. The travaux préparatoires of an article on the right to own property for eventual insertion into the Covenants on Human Rights reflected the diversity of opinions and the difficulties of drafting a text that could find common acceptance. While no one questioned the right of the individual to own property, there were considerable differences of opinion with regard to the concept of property, its role and functions, and the restrictions to which the right to own property should be subjected.

7. No agreement was reached on a text or on whether the right should be included in the International Covenant on Civil and Political Rights or in the International Covenant on Economic, Social and Cultural Rights or in both. 2/ An attempt was made to come to an agreement through the appointment of a sub-committee of the Commission on Human Rights; however, the text proposed by the sub-committee was rejected and the Commission, at its tenth session, decided to adjourn indefinitely consideration of the question of the inclusion of an article on the right to property in the draft covenant on economic, social and cultural rights.

8. During the consideration of the draft covenants by the General Assembly, suggestions for the inclusion of an article on the right to property in one or the other of the two covenants were made, but none was taken to a vote. Consequently, the covenants, as adopted on 16 December 1966, do not contain a provision concerning this right.

9. Aspects of the right to property have repeatedly been considered and dealt with by the General Assembly and the Economic and Social Council in connection with the problem of land reform. To the extent that it deals with

nationalization, expropriation and requisitioning, General Assembly resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources deals with aspects of the right to own property in the context of the right of peoples and nations to permanent sovereignty over their natural wealth and resources.

10. The General Assembly, in its resolution 41/132 of 4 December 1986, invited the United Nations regional commissions "to consider the relationship between the full enjoyment of the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, and the economic and social development of Member States".

11. The Commission on Human Rights, in resolution 1987/18 of 10 March 1987, decided to consider at its forty-fourth session the influence of various forms of property on the enjoyment of human rights and fundamental freedoms.

12. At its forty-second session, the General Assembly, in its resolution 42/114 of 7 December 1987, took note of the preliminary oral report on this question made by the Under-Secretary-General for Human Rights and renewed its request to the Secretary-General to report his findings to the Assembly at its forty-third session.

13. The General Assembly and the Commission on Human Rights have adopted a number of resolutions in which important issues were brought forward for consideration by the Secretary-General in drafting his report. Both the Assembly and the Commission have recognized that there exist in Member States many forms of legal property ownership, including private, communal, social and state forms, each of which should contribute to ensuring the effective development and utilization of human resources through the establishment of sound bases for political, economic and social justice. They have also recognized that the right to property may play an influential role in fostering widespread enjoyment of other human rights and contribute to securing the goals of economic and social development. The substance of those resolutions is considered in more detail in chapter II B.

II. METHODOLOGICAL ASPECTS

A. Legal aspects - international dimension of the right to property 3/

1. United Nations instruments relating to the right to property

14. Within the United Nations system the right to property is recognized in several instruments already adopted and is also mentioned in some draft instruments which are being prepared, such as the draft declaration on the rights of indigenous populations.

Universal Declaration of Human Rights

15. The first mention of this right is in article 17 of the Universal Declaration of Human Rights, which reads:

"1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property."

16. The complexity of the issues underlying the right to property was evidenced during the drafting of this article. The first session of the Commission on Human Rights produced a draft reading: Everyone has the right to own personal property. No one shall be deprived of his property except for public welfare and with just compensation (E/CN.4/21). At the Commission's second session a working group proposed to add "in conformity with the laws of the State in which such property is located", after "everyone has the right to own property" (E/CN.4/57). This text was subsequently included in the draft International Declaration on Human Rights, submitted by the Commission to the Economic and Social Council in 1947 (E/600). The Working Group in 1948 put the right to property in a broader context: "Everyone has the right to own such property as meets the essential needs of decent living, that helps to maintain the dignity of the individual and of the home, and shall not be arbitrarily deprived of it" (E/CN.4/95). However, this amendment did not survive subsequent debates in the Commission, the Economic and Social Council and the Third Committee of the General Assembly, and the final text does not refer to conformity with State laws, personal property or the essential needs of decent living.

17. Article 17 of the Universal Declaration of Human Rights should be read in conjunction with article 2, first paragraph, of the Declaration, which prohibits distinction in the enjoyment of human rights by reason, inter alia, of property. In this regard, it may be noted that the Special Rapporteur of the Sub-Commission, Mr. Hernán Santa Cruz, in his study of discrimination in the matter of political rights, rejected distinctions and preferential treatment of property holders. 4/

18. Neither the International Covenant on Economic, Social and Cultural Rights nor the International Covenant on Civil and Political Rights contains an explicit reference to the right to property. 5/

Convention relating to the Status of Refugees of 1951

19. Article 13 of the Convention relating to the Status of Refugees of 1951 6/ provides that refugees shall receive treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. As regards industrial property of refugees, article 14 of the Convention provides that "In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country".

Convention relating to the Status of Stateless Persons of 1954

20. The Convention relating to the Status of Stateless Persons, 7/ adopted in 1954, provides in its article 13 provides that a stateless person shall be accorded treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

International Convention on the Elimination of All Forms of Racial Discrimination of 1965

21. Under article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (resolution 2106 A (XX), annex), States parties undertake to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of a number of rights, including "the right to own property alone as well as in association with others" and "the right to inherit".

Convention on the Elimination of All Forms of Discrimination against Women of 1979

22. The Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex) in its article 16, provides, inter alia, "The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration".

Declaration on the Rights of Disabled Persons of 1975

23. The Declaration on the Rights of Disabled Persons of 1975 (resolution 3447 (XXX)) in its paragraph 11 provides that "Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property".

Declaration on Social Progress and Development of 1969

24. The Declaration on Social Progress and Development of 1969 (resolution 2542 (XXIV)), deals with the role of property in development. Article 6 of that Declaration reads, in part:

> "Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people".

25. To the extent that it deals with nationalization, expropriation and requisitioning, General Assembly resolution 1803 (XVII) of 14 December 1962 entitled "Permanent sovereignty over national resources" 8/ also deals with

aspects of the right to own property against the background of the right of peoples and nations to permanent sovereignty over their natural wealth and resources. Further, various aspects of the right to property have repeatedly been considered and dealt with by the General Assembly and the Economic and Social Council in connection with the problems of land reform.

Convention on the Rights of the Child of 1989

26. Article 3, paragraph 2 of the Convention (General Assembly resolution 44/25, annex) provides that:

> "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures".

Further, article 27, paragraphs 1, 2 and 3 provide:

> "1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
>
> 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
>
> 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990

27. Article 15 of the Convention (resolution 45/158, annex) provides that "No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation".

2. Regional instruments

African Charter on Human and Peoples' Rights

28. The African Charter on Human and Peoples' Rights, adopted by the eighteenth Assembly of Heads of State and Government of the Organization of African Unity, held at Nairobi in June 1981, provides in article 13, paragraph 3: "Every individual shall have the right of access to public property and services in strict equality of all persons before the law".

Further, article 14 of the Charter states that "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws".

American Declaration of the Rights and Duties of Man

29. The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, contains a number of provisions relating to economic and social rights, including that of property. Article XXIII of the Declaration states that "every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home".

American Convention on Human Rights

30. Article 21 of the American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights in 1969, reads as follows:

> "1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment in the interest of society.
>
> 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
>
> 3. Usury and any other form of exploitation of man by man shall be prohibited by law."

European Convention for the Protection of Human Rights and Fundamental Freedoms

31. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 contains no reference to the right to own property. However, article 1 of Protocol No. 1 (of 20 March 1950) provides that every "natural or legal person is entitled to the peaceful enjoyment of his possessions" and that no one "shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law". Under the second paragraph of that article, the "preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

B. Institutional aspects

1. Governments 9/

32. Pursuant to the request made by the General Assembly in its resolution 41/132, the Secretary-General in May 1987 requested information and views from Governments, specialized agencies, other United Nations bodies and relevant non-governmental organizations in consultative status. In April 1988, the Secretary-General renewed his request to Governments, specialized agencies and other United Nations bodies.

33. Pursuant to those requests, information of a substantive nature was received from the following Governments: Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Dominica, German Democratic Republic, Germany, Federal Republic of, Haiti, Iraq, Luxembourg, Madagascar, Mexico, Morocco, Nepal, Qatar, Sudan, Syrian Arab Republic, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela. These replies were described in the Secretary-General's report (A/43/739).

34. The General Assembly, in its resolution 43/123 of 8 December 1988, requested the Secretary-General to seek the views of Member States and of the specialized agencies and other competent bodies of the United Nations system on the means whereby and the degree to which the right to own property alone as well as in association with others contributes to the development of individual liberty and initiative, which serve to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms. Further, it suggested that Member States and the specialized agencies and other competent bodies address, in particular, the right to own the following types of property:

(a) Personal property, including the residence of one's self and family;

(b) Economically productive property, including property associated with agriculture, commerce and industry.

In addition, the Secretary-General was requested to report his findings to the General Assembly at its forty-fifth session.

35. In its resolution 43/124 of 8 December 1988 the General Assembly requested the Secretary-General to take resolution 43/124 into account when preparing his report to the General Assembly in accordance with resolution 43/123.

36. Pursuant to these resolutions, the Secretary-General, by a communication dated 9 February 1990, invited Member States, specialized agencies and other competent bodies of the United Nations system to submit their views on the subject. In reply to this request, as at 10 October 1990, the Governments of the following countries had submitted substantive information: Australia, Bolivia, Canada, Colombo, Egypt, Kenya, Pakistan, Panama, Portugal, Saudi Arabia, Sudan, Turkey, United States and Yugoslavia. This information can be found in the report of the Secretary-General (A/45/523).

37. Almost all Governments responding to the request for information referred to the national dimensions of the right to property in the legal recognition or protection given to property by national law and in some cases to the types of ownership. In addition, certain replies referred to the role which the right to property plays in national development and some touched on the international dimensions of this right.

38. In view of the political, economic and social changes which have taken place in many countries recently, or at any rate since since the replies submitted pursuant to the requests made in resolutions 41/132, 43/123 and 43/124 was received, the information should be updated. Also, replies should be obtained from Governments who have, thus far, failed to respond.

2. General Assembly and Commission on Human Rights 10/

39. The General Assembly and the Commission on Human Rights have adopted a number of resolutions in which important issues were brought forward for consideration by the Secretary-General in drafting his report as requested in resolution 41/132.

40. The principal focus of General Assembly resolutions 41/132 and 42/115 and Commission resolutions 1987/17 and 1988/18 is on the legal protection of the right to property as a human right and its relationship to the economic and social development of the individual, within his socio-economic system. In those resolutions, the Assembly and the Commission emphasized the right not to be deprived of one's property arbitrarily (art. 17 of the Universal Declaration of Human Rights), and recognized that the right to property should be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society (art. 29 of the Universal Declaration), that no State, group or person should engage in any activity or perform any act aimed at the destruction of, inter alia, the right to property (art. 30 of the Universal Declaration) and that States should establish national legislation to protect the right of everyone to own property alone as well as in association with others. They also stressed the role of individual initiative as a valuable resource in promoting economic and social development.

41. By resolution 42/115 of 7 December 1987, the General Assembly called upon States to ensure that their national legislation with regard to all forms of property should preclude any impairment of the enjoyment of human rights and fundamental freedoms, without prejudice to their right freely to choose and develop their political, social, economic and cultural systems. 11/

42. In Assembly resolution 42/115 and Commission resolutions 1987/18 and 1988/19, other elements were brought forward relating to the links between the right to own property and the right to self-determination, the right to sovereignty over all natural wealth and resources and the right to the establishment of a new international economic order. Referring to article 6 of the Declaration on Social Progress and Development, the Assembly and the Commission reaffirmed that social progress and development require the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of human exploitation, ensure equal rights to property for all and create conditions leading to genuine equality among people.

43. In those resolutions the Assembly and the Commission also emphasized the role of the public sector in promoting the economic development of developing countries, expressed their conviction that social justice is a prerequisite for lasting peace and that man can achieve complete fulfilment of his aspirations only within a just social order and called upon States to ensure that their national legislation with regard to all forms of property precludes any impairment of the enjoyment of human rights and fundamental freedoms, without prejudice to their right freely to choose and develop their political, social, economic and cultural systems. Finally, those resolutions referred

specifically to transnational corporations and urged them to ensure that their activities do not adversely affect the process of implementing human rights in developing countries.

3. Other United Nations bodies 12/

44. Pursuant to the request of the General Assembly in its resolution 41/132, information and views were received from the United Nations Population Fund, the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, and the United Nations Centre for Human Settlements (Habitat); the information can be found in the report of the Secretary-General (A/43/739).

45. Pursuant to the requests of the General Assembly in its resolutions 43/123 and 43/124, information was received from the Office of the Under-Secretary-General for International Economic and Social Affairs, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the United Nations Centre for Human Settlements (Habitat), and the Economic and Social Commission for Western Asia; the information can be found in the report of the Secretary-General (A/45/523).

4. Committee on Economic, Social and Cultural Rights

46. The Committee on Economic, Social and Cultural Rights has dealt with some aspects of this right. For instance, it has paid increasing attention to the right to housing at each of its sessions, devoting adequate time to a general discussion of this right and its concrete implementation by States according to their obligations under article 11 of the Covenant.

5. Specialized agencies

47. Pursuant to the request of the General Assembly in its resolution 41/132, information was received from the International Labour Organisation, the World Intellectual Property Organization and the United Nations Development Programme; this information can be found in document A/43/739.

48. Pursuant to resolutions 43/123 and 43/124, information and views were received from the Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization (report of the Secretary-General, A/45/523).

6. Non-governmental organizations

49. Pursuant to the request of the General Assembly in its resolution 41/132, the following non-governmental organizations in consultative status with the Economic and Social Council forwarded substantive contributions: International Organization of Employers (Cat. I) and Christian Democratic International, Four Directions Council, General Arab Women Federation, International Association of Democratic Lawyers and Socialist International Women (Cat. II). This information can be found in the report of the Secretary-General (A/43/739).

7. Relevant reports of the special rapporteurs of the Commission and the Sub-Commission

50. Reference will be made to the relevant parts of the reports of the special rapporteurs of the Commission and the Sub-Commission which contain views or comments on the right to property or the exercise thereof. Meanwhile, it is sufficient to refer to the reports of Mr. Danilo Türk (E/CN.4/Sub.2/1990/19 and E/CN.4/Sub.2/1991/17). In the first of these documents Mr. Türk examines the right to adequate housing (paras. 108 ff) and land rights (paras. 121 ff). In the second document (paras. 176 ff.), the Special Rapporteur analyses privatization, the market, human rights and adjustment programmes.

III. CONCEPTUAL ASPECTS

51. The report should make a few remarks concerning the place of the right to own property in the hierarchy of all human rights and specific features of that right and its implementation. These seem to have relevance for the realization of pertinent economic, social and cultural rights, in particular the right to housing.

52. It should be pointed out that the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, is of particular significance in fostering widespread enjoyment of other basic human rights and contributes to securing the goals of economic and social development enshrined in the Charter of the United Nations.

53. Special attention will be paid to the provision contained in paragraph 4 of Commission resolution 1991/19, by which the Commission requested "the independent expert, in preparing the study, to analyse the right to own property alone as well as in association with others in relation to the following types of property, taking into consideration the question of social justice and the ways to achieve it:

(a) Personal property, including the residence of one's self and family;

(b) Economically productive property, including property associated with agriculture, commerce and industry".

Consideration of basic conceptual issues

54. The following aspects, inter alia, should be highlighted:

(a) Enunciation of the concept of and the difficulties posed by differences of opinion with regard to the right to own property according to the various social and political systems of different States;

(b) The relationship between the full enjoyment by individuals of the right of everyone to own property alone as well as in association with others and the economic and social development of States;

(c) Legal protection of the right to own property as a human right and its relationship to ensuring the full and free participation of individuals in the economic and social systems of States.

55. The following information relating to legislation, policy and practical measures will be considered:

(a) Recognition by States of many forms of legal property ownership - private, State, communal and social forms. Elaboration of each of them;

(b) Industrial property (inventions, drawings, designs, trademarks, commercial names, etc.);

(c) Intellectual property and copyrights (literary and art works and artistic performances);

(d) Legislation relevant to land use, distribution, allocation, zoning and ceilings; expropriations, including provisions for compensation; land-use planning, including provisions for community participation;

(e) The right to adequate housing (reference to the working paper to be prepared by Mr. Rajindar Sachar);

(f) Examination of levels of taxation, income distribution, the role of the State in general in providing for infrastructure and other elements of the right to own property;

(g) Tendency in some States to reduce State-owned property and to transfer it to private hands;

(h) The right to own property and the principle of non-discrimination:

(i) Distinction between nationals and foreigners in relation to the enjoyment of this right;

(ii) Distinction between men and women in relation to the enjoyment of this right;

(iii) Recognition in the constitution and other legal acts of the property rights of the indigenous populations.

56. The following restrictions and limitations will apply:

(a) Recognition of the fact that the right to own property is not absolute:

(i) General regulations in the interest of public welfare, security and health which the State, by virtue of its law-enforcement authority may adopt;

(ii) Limitations deriving from the State's powers of taxation;

(iii) Death duties;

(iv) Confiscation of property belonging to persons who commit offences;

(v) Confiscation of or limitations on property belonging to nationals of enemy powers in time of war;

(vi) Expropriation;

(b) Limitations on the action of the State:

(i) Improper interference with and prohibition of seizure of property without compensation;

(ii) "Arbitrary" or "illegal" seizure;

(iii) Just, equitable, reasonable and prior compensation in accordance with the law.

IV. THE RELATIONSHIP BETWEEN THE FULL ENJOYMENT BY INDIVIDUALS OF THE RIGHT OF EVERYONE TO OWN PROPERTY ALONE AS WELL AS IN ASSOCIATION WITH OTHERS AND THE ECONOMIC AND SOCIAL DEVELOPMENT OF MEMBER STATES

57. In resolution 41/132 the General Assembly "convinced that the full enjoyment by everyone of the right to own property alone as well as in association with others contributes to securing the goals of economic and social development enshrined in the Charter of the United Nations", and, reaffirming, "in accordance with article 29 of the Universal Declaration of Human Rights, that, in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society", recognized that there exist in Member States "many forms of legal property ownership, including private, communal and state forms, each of which should contribute to ensuring effective development and utilization of human resources through the establishment of sound bases for political, economic and social justice".

58. In paragraph 3 of that resolution, the General Assembly affirmed "in accordance with article 30 of the Universal Declaration of Human Rights, that nothing in the Declaration, including the right of everyone to own property alone as well as in association with others, may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein".

59. In paragraph 5, the General Assembly requested the Secretary-General "to prepare a report, taking into account the views of Member States, specialized agencies and other competent bodies of the United Nations system, within existing resources, on:

(a) The relationship between the full enjoyment by individuals of human rights and fundamental freedoms, in particular the right of everyone

to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, and the economic and social development of Member States;

(b) The role of the right of everyone to own property alone as well as in association with others, as set forth in article 17 of the Universal Declaration of Human Rights, in ensuring the full and free participation of individuals in the economic and social systems of States".

60. These issues raise a variety of political, economic, social, and even ideological questions. The Expert understands from the provisions of the pertinent resolutions that the Commission would prefer to have a legal interpretation of the subject rather than politico-economic expertise, and that it should not be his task to determine whether one or another form of property ownership would contribute most to the development process.

61. The Expert feels that the study will above all be based on the international norms and national legislation regulating the protection of the right to property. In this connection, reference may be made to the necessity for regulations concerning access to land by poor or other underprivileged or disadvantaged groups as a fundamental requirement for the implementation of their right to own property and to meet more effectively their social needs. In this regard, attention may be drawn to discriminatory factors which may exist to restrict the social integration and advancement of women, the poor, the aged, the young, the indigenous populations and migrant workers in many parts of the world. For example, women in the developing countries produce most of the food but often do not have access to property.

62. Matters which deserve particular attention include:

(1) The right of States and peoples freely to choose and develop without outside interference, their political, social, economic and cultural systems, as well as to determine their laws and regulations, and, in this context, the relationship between the right to property and the promotion and enjoyment of democracy; and

(2) The principle of the unity and indivisibility of human rights and the necessary balance between them.

63. Under the heading of interrelationship between property rights and other human rights are grouped the following:

(a) Property rights as the means for enlarging people's participation, as an important factor in development and in full realization of all human rights;

(b) Negative effects of some forms of legal property ownership on human rights (exploitation of labour, social inequality, unemployment, private capital production and export of armaments, role of transnational corporations in relation to the human rights situation in developing countries);

(c) Guarantees and effective ways and means of enabling socially and economically disadvantaged people to have access to legal property ownership, including private, communal or state forms.

V. THE ROLE OF THE RIGHT OF EVERYONE TO OWN PROPERTY ALONE AS WELL AS IN ASSOCIATION WITH OTHERS IN ENSURING THE FULL AND FREE PARTICIPATION OF INDIVIDUALS IN ECONOMIC AND SOCIAL SYSTEMS OF STATES

64. With reference to this issue, it may be stated that property rights may be conceived as one of the means for enlarging people's participation in, and the acceleration of, their social and economic development, particularly in developing countries.

65. Conclusions and recommendations will be made on the basis of the concepts and ideas as well as a legal analysis of the issue.

Notes

1/ United Nations Action in the Field of Human Rights, United Nations publication, Sales No. E.88.XIV.2, chap. II, paras. 12-14 and 25; chap. VIII, paras. 279-284.

2/ For a summary of the proceedings relating to the inclusion of an article on the right to own property in either Covenant, see Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28, part II, chap. VIII, paras. 195-212, and Official Records of the Economic and Social Council, eighteenth Session, Supplement No. 7 (E/2573), paras. 40-71.

3/ Document A/43/739, paras. 12-22.

4/ Study of Discrimination in the Matter of Political Rights, United Nations publication, Sales No. 63.XIV.2.

5/ See note 2.

6/ United Nations, Treaty Series, vol. 189, No. 2545, p. 137.

7/ Ibid., vol. 360, No. 5158, p. 117.

8/ See, for example, General Assembly resolutions 1426 (XIV) of 5 December 1959 and 1828 (XVII) of 18 December 1962, and Economic and Social Council resolution 887 (XXXIV) of 24 July 1962.

9/ Document A/43/739, paras. 8, 9 and 27; A/45/523, paras. 1-

10/ A/43/739, paras. 4-7.

11/ United Nations Action in the Field of Human Rights, op. cit., chap. VIII, para. 285.

12/ Documents A/43/739 and A/45/523.